

REMARKS

This Amendment and Reply is intended to be completely responsive to the Final Office Action mailed January 30, 2009. Applicant respectfully requests reconsideration of the present Application in view of the reasons that follow. No claim amendments or cancellations have been made. Accordingly, Claims 5-26 will remain pending in the present Application upon entry of this Amendment and Reply.

A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the Application, is presented, with an appropriate defined status identifier.

Claim Rejections – 35 U.S.C. § 103

On pages 2 through 4, the Examiner rejected Claims 5-26 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,738,427 to Nishino (“Nishino”) in view of U.S. Patent No. 5,791,738 to Niezoldt (“Niezoldt”). This rejection should be withdrawn because Nishino, alone or in any proper combination with Niezoldt, fails to disclose, teach or suggest the claimed invention.

For example, independent Claim 5 recites a “seat for a vehicle” comprising, among other elements, a “seatback including a seatback frame made from a pipe and sub-frames, each of the sub-frames being cut from a pipe to have an upper cut end and a lower end, the upper cut ends of the sub-frames being respectively coupled to the seatback frame, the lower ends of the seatback frame and the lower ends of the sub-frames being supported by the support frames” (emphasis added).

Also, independent Claims 9 and 12 recite a “seat for a vehicle” comprising, among other elements, a “seatback including a seatback frame having lower ends and sub-frames having upper cut ends and lower ends, the upper cut ends of the sub-frames being coupled to the seatback frame, the lower ends of the seatback frame and the lower ends of the sub-frames being supported by the pair of support members” (emphasis added).

Further, independent Claim 14 recites a “seat for a vehicle” comprising, among other elements, a “seatback movably coupled to the first and second support members and including a first frame, a second frame and a third frame, the second frame and the third frame having first cut ends coupled to the first frame and second ends, ends of the first frame and the second ends of the second frame and third frame being supported by the first and second support” (emphasis added).

Nishino, alone or in any proper combination with Niezoldt, fails to disclose, teach or suggest such seats for a vehicle.

In rejecting Claims 5-26, the Examiner stated:

[E]ach of the sub-frames [of Niezoldt] has an upper cut end as is best disclosed in Figure 1. The ‘upper cut’ corresponds to a right angle cut out portion that receives an edge of reinforcement portion (8). This angle is capable of being formed by a cutting process and therefore constitutes an ‘upper cut end.’

In response to the Amendment and Reply filed October 3, 2008, in which the Applicant noted that if the right angle bent portion was formed via a cutting process, the “flattened sections (6’ and 7’)” would not be formed and would instead be replaced with a hole or gap in which the “separator (8)” rests, the Examiner stated:

the term ‘flattened sections’ could in fact refer to a flattened edge section of a cut out in which the separator (8) rests. The language of Niezoldt makes it undeterminable whether or not the angled portion [is] formed by bending or cutting. However, it is possible that the angled portion be formed by either bending OR cutting and therefore the Examiner maintains that the teachings of Niezoldt meet the product by process limitations of the claim.

In response to the Applicant’s statement that the broken lines shown in Niezoldt clearly indicate that the “flattened out segments (6’ and 7’)” are formed by plastic deformation and not cut out, the Examiner stated “such broken lines could equally indicate a cut line or a bend line. Since the

angled portion is CAPABLE of being formed by cutting, the Examiner maintains that the teachings of Niezoldt meet the product by process limitations of the claim.” And finally, in response to the Applicant’s statement that using a cutting process to form the “flattened out segments (6’ and 7’)” would leave the frame weak and inoperable, the Examiner stated “the presence of separator (8) in the cut out portion would maintain the strength and integrity of the system.”

Applicant respectfully disagrees with each of the positions taken by the Examiner. With regard to the Examiner’s continued assertion that it is possible that the angled portion shown in Figure 1 be formed by either bending or cutting, Applicant submits that such an assertion is without basis and is inconsistent with the teachings of Niezoldt. The angled portion in Figure 1 identified by the Examiner is a simply a side view of the “flattened out segments (6’ and 7’).” Niezoldt clearly discloses that the “flattened out segments (6’ and 7’) are sections on the “transverse parts 6 and 7” that are formed by plastic deformation. For example, Niezoldt discloses that the “separator (8)” is welded to the “transverse parts (6 and 7)” and expressly states that “[t]he weld seams, which connect the separator (8) to the two transverse parts (6 and 7), are designated as 10” (col. 2, lines 44-46). As shown in Figure 3, these “weld seams 10” are located in the middle of the “flattened out segments (6’ and 7’).” The are no cut outs anywhere along this weld or bearing surface. Further, the location of the reference lines in Figure 3 contradicts the Examiner’s argument that the “flattened out segments” could refer to a flattened edge section of a cut out in which the separator rests. The reference lines for the “flattened out segments (6’ and 7’)” terminate in the middle of these sections, and not at any cut out edge. Further still, from Figure 4, it is clear that the “separator (8)” rests flat on the face of the “flattened out segments (6’ and 7’)” and is not supported on any flattened edge section of a cut out. Even further still, considering that Niezoldt discloses that the “transverse parts 6 and 7” are tubular members, if there was any cut out within these members, as alleged by the Examiner, an opening would be formed. From Figures 3 and 4, it is clear that no such opening exists.

With regard to the Examiner's argument that the presence of the "separator (8)" in a cut out portion would maintain the strength and integrity of the system, Applicant reiterates that to substitute cuts ends for the flattened segments taught by Niezoldt would significantly weaken the structure of the "transverse parts (6 and 7)," even with the presence of the "separator (8)." Such a substitution would not have been obvious to one of ordinary skill in the art at the time of the invention because such a modification would render the seat back disclosed in Niezoldt unsatisfactory for its intended purpose, which is to "contribute to a considerable increase in the seat back's stability under load" (col. 3, lines 1-3). Applicant notes that the "separator (8)" is a headrest mount configured to receive a headrest device used to restrain a passenger's head movement in a vehicle collision in order to reduce neck/head injury of the passenger (col. 2, lines 35-47). Therefore, the connection between the "separator (8)" and the "transverse parts (6 and 7)" must have enough strength to withstand the forces associated with a vehicle collision. It is very well known and obvious to one of ordinary skill in the art that the "flattened out segments (6' and 7')" are flattened by plastic deformation and must never include a cut out. If the "flattened out segments (6' and 7')" included a cut out, the strength of the seat back would be weakened and the passenger's head could not be restrained sufficiently in a vehicle collision. If a proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. See M.P.E.P. § 2143.01 (V). As such, there is no suggestion or motivation to make the modification to Niezoldt proposed by the Examiner.

Accordingly, Applicant submits that independent Claims 5, 9, 12 and 14 are allowable over the cited references because at least one limitation in each of these rejected independent claims is not taught or suggested by the cited references, alone or in any proper combination. Dependent Claims 6-8, 10, 11, 13 and 15-26 variously depend from independent Claims 5, 9, 12 and 14, and are allowable therewith for at least those reasons set forth above, without regard to the further patentable limitations set forth in such claims. Reconsideration and withdrawal of the rejections of Claims 5-26 is respectfully requested.

* * *

Applicant respectfully submits that each and every pending rejection has been overcome, and that the present Application is in a condition for allowance. In particular, even when the elements of Applicant's claims, as discussed above, are given a broad construction and interpreted to cover equivalents, the cited references do not teach, disclose, or suggest the claimed subject matter. Favorable reconsideration of the Application is respectfully requested.

Further, Applicant respectfully puts the Patent Office and all others on notice that all arguments, representations, and/or amendments contained herein are only applicable to the present Application and should not be considered when evaluating any other patent or patent application including any patents or patent applications which claim priority to this patent application and/or any patents or patent applications to which priority is claimed by this patent application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, the Applicants hereby petition for such extension under 37 C.F.R. § 1.136 and authorize payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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